RECENT CASES

ADVERSE POSSESSION—PROPERTY SUBJECT TO PRESCRIPTION—PROPERTY DEDICATED TO PUBLIC USE.—TOWN OF ELDORADO V. RITCHIE GROCERY CO., 104 S. W. 549 (ARK.).—Where land donated to a town for street purposes on condition that it survey the same and lay out streets thereon, and keep them in good condition, was thereafter, on failure to perform such condition, conveyed to another, and for more than seven years held adversely to the town, and permanent and valuable improvements put thereon, title was in the occupant.

The rules laid down by the courts in this matter are exceedingly diverse and unsatisfactory. In *Sheen v. Stothart,* 29 La. Ann. 630, it was stated that after a dedication to public use, no silence or length of time or non-user can deprive a public corporation of its power, and until the time arrives when the land is actually needed for street purposes, no mere non-user will operate as an abandonment, *Reilly v. Racine,* 51 Wis. 526; so also in *Webb v. Demopolis,* 95 Ala. 116, the city holds in trust for its citizens and statute of limitations does not run against her; and public rights cannot be destroyed by long continued trespasses, *Kittaning v. Brown,* 41 Pa. St. 269, therefore, there is no loss of public right by non-user, *Hfd. v. N. Y. & N. E. R. R. Co.,* 59 Conn. 250. In *Rowan's Ex'rs. v. Town of Portland,* 47 Ky. 232, it was said that ground being dedicated to a town for public use, the right is not lost for want of use, while in *Williams v. First Presbyterian Society of Cincinnati,* 1 Ohio St. 478, the court held that the right of a county or town to property dedicated may be barred by statute of limitations.

APPEAL—HARMLESS ERROR—ADMISSION OF EVIDENCE.—LOUISVILLE & N. R. CO. ET AL., V. GOLLIHUR, 82 N. E. 492 (IND.).—In an action for death in a railroad collision, caused by negligence of the train dispatcher, the admission of a letter from a railroad officer, which was pinned to the original dispatch, *held,* under the circumstances, not prejudicial to defendant.

ATTORNEY AND CLIENT—AUTHORITY OF ATTORNEY—PRESUMPTION.—AARON V. U. S. ET AL., 155 FED. 833.—*Held,* the entry of appearance for a defendant by an attorney is presumed to have been authorized, and, to relieve himself from the effect of such appearance, such defendant has the burden of proving to the satisfaction of the court that it was unauthorized.

BURGLARY—NATURE AND ELEMENTS OF OFFENSE—BREAKING AND ENTERING—STATUTES.—ANDERSON V. STATE, 104 S. W. 1096 (ARK.).—*Held,* that the prying off of a wooden shutter over a window of a store without opening or breaking the window, and the cutting of an inch square hole through the door of the store too far from the latch to permit the use of an instrument to unfasten the door, did not constitute a breaking or entering sufficient to sustain a charge of burglary under a statute which provided that burglary

is committed by breaking or entering the house or other building of another in the night-time with intent to commit a felony. Hill, C. J., *dissenting.*

In some states the Common Law definition of burglary is changed by statute so that breaking and entering are not both essential, the mere entering being sufficient with other elements. *People v. Barry,* 94 Cal. 481; in other states a breaking is the requirement. *Mullins v. Com.,* 20 S. W. (Ky.) 1035. There exists some want of harmony as to the amount of force that would be a violation of the security of the house. A screen fastened into the window with nails was removed by defendant and it was held to be a breaking. *Sims v. State,* 136 Ind. 358, while the removal of planks in a partition wall was not burglary. *Com. v. Trimmer,* 1 Mass. 476. In another instance, the pushing open of a screen door, the inner door standing open, constituted the crime. *State v. Conners,* 95 Iowa 485. "Forcible" breaking, as required by some statutes, only expresses the degree of force that was implied at common law from the word "break." *Timmons v. State,* 34 Ohio St. 426.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—LICENSES—EX PARTE ACKERMAN, 91 PAC. 429 (CAL.).—*Held,* that an ordinance imposing a license tax on the keepers of dogs is not invalid for unreasonableness and as providing for the taking of property without due process of law, because providing for the destruction of the dog upon which no license tax has been paid two days after the dog has been impounded, unless it has been redeemed, without notifying the owner.

License tax on dogs is not a tax in the sense of a burden or charge put upon persons or property for public uses, *Mitchell v. Williams,* 27 Md. 62, but is a mere regulative expedient, and summary destruction of the dogs for violation of the law, *Van Born v. People,* 46 Mich. 183, finds its basis in law of necessity and is imposed by police power, *Morewood v. Wakefield,* 133 Mass. 240, and is wholly free from constitutional objection either as depriving one of property without process or being denied equal protection of the law; *The State v. City of Topeka,* 36 Kan. 76; *Carter v. Done,* 16 Wis. 298, because, although property rights are recognized in dogs, it is a base and inferior right, *Woolf v. Chalker,* 31 Conn. 121, and further, because the police power must protect the lives, health, comfort and quiet of all persons and protect all property within the state, *Thorpe v. Rutland, etc., R. R. Co.,* 27 Vt. 140, from destruction and annoyance, *City of Hagerstown v. Witner,* 86 Md. 293. *Lynn v. State,* 33 Tex. Com. Rep. 153, is *contra.*

CONTRACTS—PARTNERSHIP—STATUTE OF FRAUDS.—KOYER V. WILLIAMS, 90 P. 135 (CAL.).—*Held,* that a partnership to buy, hold and sell lands may be validly formed by parol.

Parol agreements to procure land on joint account are not generally enforceable as within the Statute of Frauds. *Parsons v. Phelan,* 134 Mass. 109; *Brosnan v. Parsons,* 63 Mich. 454. Where one party procures title to land transferred to himself, the other parties to the agreement cannot compel a division in the absence of a writing. *Robbins v. Kimball,* 55 Ark. 416; *Young v. Wheeler,* 34 Fed. 98. The courts may, however, even if they refuse to consider the question of partnership, enforce the agreement as a case of resulting trust. *Larkins v. Rhodes,* 5 Port. 195; *Wallace v. Carpenter,* 85 Ill. 590. Some courts hold that a parol agreement to divide the land itself is not enforceable. *Morton v. Nelson,* 145 Ill. 586. But the rule does not apply to agreements for the division of the profits arising from the sale of lands.